

§ 354.8

19 CFR Ch. III (4–1–08 Edition)

Board is not necessary. The charged or affected party may request a hearing but at the same time request that a presiding official not be appointed pending settlement discussions. Settlement agreements may include sanctions for purposes of § 354.18. The Deputy Under Secretary for International Trade may amend, supplement, or withdraw the charging letter as follows:

(1) If there has been no request for a hearing, or if supporting information has not been submitted under § 354.13, the withdrawal will not preclude future actions on the same alleged violation.

(2) If a hearing has been requested but no presiding official has been appointed, withdrawal of the charging letter will preclude the Deputy Under Secretary for International Trade from seeking sanctions at a later date for the same alleged violation.

(3) The Deputy Under Secretary for International Trade may amend, supplement or withdraw the charging letter at any time after the appointment of a presiding official, if the presiding official determines that the interests of justice would thereby be served. If the presiding official so determines, the presiding official will also determine whether the withdrawal will preclude the Deputy Under Secretary for International Trade from seeking sanctions at a later date for the same alleged violation.

(c) *Service of charging letter on a resident of the United States.* (1) Service of a charging letter on a United States resident will be made by:

(i) Mailing a copy by registered or certified mail addressed to the charged or affected party at the party's last known address;

(ii) Leaving a copy with the charged or affected party or with an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service for the party; or

(iii) Leaving a copy with a person of suitable age and discretion who resides at the party's last known dwelling.

(2) Service made in the manner described in paragraph (c) (ii) or (iii) of this section shall be evidenced by a certificate of service signed by the person making such service, stating the

method of service and the identity of the person with whom the charging letter was left.

(d) *Service of charging letter on a non-resident.* If applicable laws or intergovernmental agreements or understandings make the methods of service set forth in paragraph (c) of this section inappropriate or ineffective, service of the charging letter on a person who is not a resident of the United States may be made by any method that is permitted by the country in which the person resides and that satisfies the due process requirements under United States law with respect to notice in administrative proceedings.

[53 FR 47920, Nov. 28, 1988, as amended at 63 FR 24405, May 4, 1998]

§ 354.8 Interim sanctions.

(a) If the Deputy Under Secretary concludes, after issuing a charging letter under § 354.7 and before a final decision is rendered, that interim sanctions are necessary to protect the interests of the Department or others, including the protection of business proprietary information, the Deputy Under Secretary may petition a presiding official to impose such sanctions.

(b) The presiding official may impose interim sanctions against a person upon determining that:

(1) There is probable cause to believe that there was a violation of an administrative protective order and the Department is likely to prevail in obtaining sanctions under this part,

(2) The Department or others are likely to suffer irreparable harm if the interim sanctions are not imposed, and

(3) The interim sanctions are a reasonable means for protecting the rights of the Department or others while preserving to the greatest extent possible the rights of the person against whom the interim sanctions are proposed.

(c) Interim sanctions which may be imposed include any sanctions that are necessary to protect the rights of the Department or others, including, but not limited to:

(1) Denying a person further access to business proprietary information.

(2) Barring a person from representing another person before the International Trade Administration.

(3) Barring a person from appearing before the International Trade Administration, and

(4) Requiring the person to return material previously provided by the Department and all other materials containing the business proprietary information, such as briefs, notes, or charts based on any such information received under an administrative protective order.

(d) The Deputy Under Secretary will notify the person against whom interim sanctions are sought of the request for interim sanctions and provide to that person the material submitted to the presiding official to support the request. The notice will include a reference to the procedures of this section.

(e) A person against whom interim sanctions are proposed has a right to oppose the request through submission of material to the presiding official. The presiding official has discretion to permit oral presentations and to allow further submissions.

(f) The presiding official will notify the parties of the decision on interim sanctions and the basis therefor within five days of the conclusion of oral presentations or the date of final written submissions.

(g) If interim sanctions have been imposed, the investigation and any proceedings under this part will be conducted on an expedited basis.

(h) An order imposing interim sanctions may be revoked at any time by the presiding official and expires automatically upon the issuance of a final order.

(i) The presiding official may reconsider imposition of interim sanctions on the basis of new and material evidence or other good cause shown. The Deputy Under Secretary or a person against whom interim sanctions have been imposed may appeal a decision on interim sanctions to the APO Sanctions Board, if such an appeal is certified by the presiding official as necessary to prevent undue harm to the Department, a person against whom interim sanctions have been imposed or others, or is otherwise in the interests of justice. Interim sanctions which have been imposed remain in effect

while an appeal is pending, unless the presiding official determines otherwise.

(j) The Deputy Under Secretary may request a presiding official to impose emergency interim sanctions to preserve the status quo. Emergency interim sanctions may last no longer than 48 hours, excluding weekends and holidays. The person against whom such emergency interim sanctions are proposed need not be given prior notice or an opportunity to oppose the request for sanctions. The presiding official may impose emergency interim sanctions upon determining that the Department is, or others are, likely to suffer irreparable harm if such sanctions are not imposed and that the interests of justice would thereby be served. The presiding official will promptly notify a person against whom emergency sanctions have been imposed of the sanctions and their duration.

(k) If a hearing has not been requested, the Deputy Under Secretary will ask the Under Secretary to appoint a presiding official for making determinations under this section.

§ 354.9 Request for a hearing.

(a) Any party may request a hearing by submitting a written request to the Under Secretary within 30 days after the date of service of the charging letter. However, the Deputy Under Secretary may request a hearing only if the interests of justice would thereby be served.

(b) Upon timely receipt of a request for a hearing, and unless the party requesting a hearing requests that the Under Secretary not appoint a presiding official, the Under Secretary will appoint a presiding official to conduct the hearing and render an initial decision.

[53 FR 47920, Nov. 28, 1988, as amended at 63 FR 24405, May 4, 1998]

§ 354.10 Discovery.

(a) *Voluntary discovery.* All parties are encouraged to engage in voluntary discovery procedures regarding any matter, not privileged, which is relevant to the subject matter of the pending proceeding.

(b) *Interrogatories and requests for admissions or production of documents.* A